

Sprint Nextel



Together with NEXTEL

Enforcement of the AT&T Merger Conditions

Interconnection Agreements
3/25/2008

Merger Commitments 7.1 & 7.4

- The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility. . . . and is consistent with the laws and regulatory requirements of, the state for which the request is made.
- The AT&T/BellSouth ILEC shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years. . . .

Sprint/BellSouth Interconnection Agreement

- The Sprint/BellSouth Interconnection agreement provided the terms and conditions under which all Sprint wireless and CLEC operations would exchange traffic with all BellSouth operating companies/territories.

The agreement provided that the companies would not seek compensation from one another for the exchange traffic but would instead exchange traffic on a “bill-and-keep” basis, recovering the cost of traffic exchange from their own customers:

- “The Parties hereby agree to a bill-and-keep *arrangement* for usage on CLEC Local Traffic, ISP-bound traffic, and Wireless Local Traffic.”
- The agreement also provided that the companies would share the **cost** of interconnecting facilities (regardless of the **state-specific price** for such facilities) on a 50/50 sharing basis.
- The agreement also contained in the attachments, **state-specific pricing** information related to those items Sprint might purchase from BellSouth in specific territories.

Bill-and-Keep is Not a Price

- Bill-and-keep is a methodology by which each carrier agrees to **forego** a price or rate for exchanging traffic. The **cost** of exchanging traffic is recovered from each carrier's own end users.
- Rule 51.713(a) acknowledges that bill-and-keep is an arrangement by which neither party charges the other.
- AT&T argues that bill-and-keep is a "rate of zero" and is therefore dependent upon a corresponding agreement that traffic exchange must be balanced and must remain balanced.
- The contract contains no provisions that indicate the parties agreed to a rate of zero and nothing in the contract imposes a balance-of-traffic requirement or re-instatement of billing if traffic exchange falls "out-of-balance."

AT&T Cannot be Permitted to Insert a Balance of Traffic Condition

- BellSouth inserted no “balance-of-traffic” provision in the contract and cannot ask the Commission amend its contract to insert one now.
- AT&T’s repeated assertions that BellSouth entered the interconnection agreements based upon an assumption of a balance of traffic is both irrelevant and inconsistent with the evidence submitted to the Commission.

The Bill-and-Keep Arrangement is not “State Specific”

- Sprint and BellSouth agreed, through free negotiations, to a bill-and-keep arrangement for all BellSouth operating territories without a balance of traffic requirement.
- The general terms and conditions contained in the contracts for all nine BellSouth states are identical (including the bill-and-keep methodology).
- Sprint Nextel is not attempting to port those provisions within the contracts that contain state-specific pricing.

The Facilities Cost Sharing Arrangement Is Not a Price or Rate

- The facilities sharing arrangement provides that the **cost** of interconnection facilities between the two parties would be shared on a 50/50 basis.
- The **price** of these facilities remained subject to state-specific and even route-specific pricing.
- Any porting of the interconnection agreement will thus continue to be subject to the state-specific **price** for interconnection facilities, but the **cost** of the facilities will be shared equally between the parties.
- AT&T provides no explanation why it believes this arrangement should be considered “unfair” or “arbitrage.”

Section 51.809(b) Does not Bar Adoption of the BellSouth ICA

- Section 51.809(b) is not relevant to enforcement of the Merger Conditions.
- Even if 51.809(b) is relevant, it does not bar adoption of the BellSouth ICA:
 - AT&T's attempt to insert a "similarly situated" condition has been expressly rejected by the Commission in a discussion of this very type of arrangement.
 - AT&T's argument is based on lost revenue, not additional cost.

Arbitrage:

Anything that Reduces AT&T's Revenue

- The merger conditions were designed to ensure the spread of best practices, not to ensure that only those contracts favorable to AT&T would be ported.
- Every aspect of a contract has financial implications that make it more or less favorable toward one party.
- AT&T's claim of arbitrage is belied by its own support for bill-and-keep arrangements in the past and its continued refusal to compensate Sprint Nextel for any traffic delivered by its IXC on the grounds that bill-and-keep is the most appropriate arrangement for such traffic, despite being 100% one-way.

State Decisions to Date

Kentucky

- > September 18, 2007: Order extending Sprint ICA 3 years.
- > December 18, 2007: Order that Nextel can adopt Sprint ICA per 252(i).
- > February 18, 2007: Order Denying AT&T Motion for Reconsideration.

Georgia

- > March 4, 2008: Ordered hearing on 47 C.F.R. §51.809(b)(1) exception.
- > March 14, 2008: After filing testimony which equated “costs” with “lost revenues,” AT&T withdrew its hearing request. Hearing canceled and awaiting final Commission decision.

Ohio

- > February 5, 2008: Order that Sprint Nextel entities can port Kentucky Sprint ICA to Ohio subject to state-specific modifications.

Kansas

- > March 12, 2008: Order that Sprint Nextel entities can port Kentucky Sprint ICA to Kansas subject to feasibility consistent with the laws and regulatory requirements of Kansas.

Others – Mississippi PSC’s 10/07 Orders dismissing Nextel’s adoption requests.